

the property, or a portion of the property, without affording an opportunity for purchase by a resident organization. However, PHAs must consult with their residents in accordance with paragraph (a) of this section. The PHA must submit documentation with date and signatures to support the applicability of one of the exceptions in paragraph (b)(3) of this section. Examples of appropriate documentation include, but are not limited to: a letter from the public body that wants to acquire the land, copies of memoranda or letters approving the PHA's previous application under part 970 or mandatory conversion plan, and the HUD transmittal document approving the proposed revitalization plan.

(c) *Established eligible organizations.* Where there are eligible resident organizations, eligible resident management corporations as defined in 24 CFR part 964, or nonprofit organizations acting on behalf of the residents as defined in 24 CFR part 964 (collectively, "established eligible organizations"), that have expressed an interest, in writing, to the PHA within 30 days of the date of notification of the proposed sale, in purchasing the property for continued use as low-income housing at the affected development, the PHA shall follow the procedures for making the offer described in § 970.11.

[71 FR 62362, Oct. 24, 2006, as amended at 73 FR 3868, Jan. 23, 2008]

§ 970.11 Procedures for the offer of sale to established eligible organizations.

In making an offer of sale to established eligible organizations as defined in § 970.9(c) in the case of proposed disposition, the PHA shall proceed as follows:

(a) *Initial written notification of sale of property.* The PHA shall send an initial written notification to each established eligible organization (for purposes of this section, an established eligible organization that has been so notified is a "notified eligible organization") of the proposed sale of the property. The notice of sale must include, at a minimum, the information listed in paragraph (d) of this section;

(b) *Initial expression of interest.* All notified eligible organizations shall have

30 days to initially express an interest, in writing, in the offer ("initial expression of interest"). The initial expression of interest need not contain details regarding financing, acceptance of an offer of sale, or any other terms of sale.

(c) *Opportunity to obtain firm financial commitment by interested entity.* If a notified eligible organization expresses interest in writing during the 30-day period referred to in paragraph (b) of this section, no disposition of the property shall occur during the 60-day period beginning on the date of the receipt of the written notice of interest. During this period, the PHA must give the entity expressing interest an opportunity to obtain a firm financial commitment as defined in § 970.5 for the financing necessary to purchase the property;

(d) *Contents of initial written notification.* The initial written notification to established eligible organizations under paragraph (a) of this section must include at a minimum the following:

(1) An identification of the development, or portion of the development, involved in the proposed disposition, including the development number and location, the number of units and bedroom configuration, the amount and use of non-dwelling space, the current physical condition (fire damaged, friable asbestos, lead-based paint test results), and percent of occupancy;

(2) A copy of the appraisal of the property and any terms of sale;

(3) Disclosure and description of the PHA's plans for reuse of land, if any, after the proposed disposition;

(4) An identification of available resources (including its own and HUD's) to provide technical assistance to the organization to help it to better understand its opportunity to purchase the development, the development's value, and potential use;

(5) A statement that public housing developments sold to resident organizations will not continue to receive capital and operating subsidy after the completion of the sale;

(6) Any and all terms of sale that the PHA will require, including a statement that the purchaser must use the property for low-income housing. If the

PHA does not know all the terms of the offer of sale at the time of the notice of sale, the PHA shall include all the terms of sale of which it is aware. The PHA must supply the totality of all the terms of sale and all necessary material to the residents no later than 3 business days from the day it receives the residents' initial expression of interest;

(7) A date by which an established eligible organization must express its interest, in writing, in response to the PHA's offer to sell the property proposed for demolition or disposition, which shall be up to 30 days from the date of the official written offer of sale from the PHA;

(8) A statement that the established eligible organization will be given 60 days from the date of the PHA's receipt of its letter expressing interest to develop and submit a proposal to the PHA to purchase the property and to obtain a firm financial commitment, as defined in §970.5. The statement shall explain that the PHA shall approve the proposal from an organization if the proposal meets the terms of sale and is supported by a firm commitment for financing. The statement shall also provide that the PHA can consider accepting an offer from the organization that differs from the terms of sale. The statement shall explain that if the PHA receives proposals from more than one organization, the PHA shall select the proposal that meets the terms of sale, if any. In the event that two proposals from the development to be sold meet the terms of sale, the PHA shall choose the best proposal. If no proposal meets the terms of sale, the PHA in its discretion may or may not select the best proposal.

(e) *Response to the notice of sale.* The established eligible organization or organizations have up to 30 days to respond to the notice of sale from the PHA. The established eligible organization shall respond to the PHA's notice of sale by means of an initial expression of interest under paragraph (b) of this section.

(f) *Resident proposal.* The established eligible organization has up to 60 days from the date the PHA receives its initial expression of interest and provides all necessary terms and information to

prepare and submit a proposal to the PHA for the purchase of the property of which the PHA plans to dispose, and to obtain a firm commitment for financing. The resident's proposal shall provide all the information requested in paragraph (i) of this section.

(g) *PHA Review of Proposals.* The PHA has up to 60 days from the date of receipt of the proposal or proposals to review the proposals and determine whether they meet the terms of sale described in the PHA's offer or offers. If the PHA determines that the proposal meets the terms of sale, within 14 days of the date of this determination, the PHA shall notify the organization of that fact and that the proposal has been accepted. If the PHA determines that the proposal differs from the terms of sale, the PHA may accept or reject the proposal at its discretion;

(h) *Appeals.* The established eligible organization has the right to appeal the PHA's decision to the Assistant Secretary for Public and Indian Housing, or his designee, by sending a letter of appeal within 30 days of the date of the PHA's decision to the field office director. The letter of appeal must include copies of the proposal and any related correspondence, along with a statement of reasons why the organization believes the PHA should have decided differently. HUD shall render a decision within 30 days, and notify the organization and the PHA by letter within 14 days of such decision. If HUD cannot render a decision within 30 days, HUD will so notify the PHA and the established eligible organization in writing, in which case HUD will have an additional 30 days in which to render a decision. HUD may continue to extend its time for decision in 30-day increments for a total of 120 days. Once HUD renders its decision, there is no further administrative appeal or remedy available.

(i) *Contents of the organization's proposal.* The established eligible organization's proposal shall at a minimum include the following:

(1) The length of time the organization has been in existence;

(2) A description of current or past activities that demonstrate the organization's organizational and management capability, or the planned acquisition of such capability through a partner or other outside entities (in which case the proposal should state how the partner or outside entity meets this requirement);

(3) To the extent not included in paragraph (i)(2) of this section, the organization's experience in the development of low-income housing, or planned arrangements with partners or outside entities with such experience (in which case the proposal should state how the partner or outside entity meets this requirement);

(4) A statement of financial capability;

(5) A description of involvement of any non-resident organization (such as non-profit, for-profit, governmental, or other entities), if any, the proposed division of responsibilities between the non-resident organization and the established eligible organization, and the non-resident organization's financial capabilities;

(6) A plan for financing the purchase of the property and a firm financial commitment as stated in paragraph (c) of this section for funding resources necessary to purchase the property and pay for any necessary repairs;

(7) A plan for using the property for low-income housing;

(8) The proposed purchase price in relation to the appraised value;

(9) Justification for purchase at less than the fair market value in accordance with § 970.19(a) of this part, if appropriate;

(10) Estimated time schedule for completing the transaction;

(11) Any additional items necessary to respond fully to the PHA's terms of sale;

(12) A resolution from the resident organization approving the proposal; and

(13) A proposed date of settlement, generally not to exceed 6 months from the date of PHA approval of the proposal, or such period as the PHA may determine to be reasonable.

(j) *PHA obligations.* The PHA must:

(1) Prepare and distribute the initial notice of sale pursuant to 24 CFR

970.11(a), and, if any established eligible organization expresses an interest, any further documents necessary to enable the organization or organizations to make an offer to purchase;

(2) Evaluate proposals received, make the selection based on the considerations set forth in paragraph (b) of this section, and issue letters of acceptance or rejection;

(3) Prepare certifications, where appropriate, as provided in paragraph (k) of this section;

(4) Comply with its obligations under § 970.7(a) regarding tenant consultation and provide evidence to HUD that the PHA has met those obligations. The PHA shall not act in an arbitrary manner and shall give full and fair consideration to any offer from a qualified resident management corporation, resident council of the affected development, or a nonprofit organization acting on behalf of the residents, and shall accept the proposal if the proposal meets the terms of sale.

(k) *PHA post-offer requirements.* After the resident offer, if any, is made, the PHA shall:

(1) Submit its disposition application to HUD in accordance with section 18 of the Act and this part. The disposition application must include complete documentation that the resident offer provisions of this part have been met. This documentation shall include:

(i) A copy of the signed and dated PHA notification letter(s) to each established eligible organization informing them of the PHA's intention to submit an application for disposition, the organization's right to purchase the property to be disposed of; and

(ii) The responses from each organization.

(2)(i) If the PHA accepts the proposal of an established eligible organization, the PHA shall submit revisions to its disposition application to HUD in accordance with section 18 of the Act and this part reflecting the arrangement with the resident organization, with appropriate justification for a negotiated sale and for sale at less than fair market value, if applicable.

(ii) If the PHA rejects the proposal of the resident organization, the resident organization may appeal as provided in paragraph (h) of this section. Once the

§ 970.13

24 CFR Ch. IX (4-1-09 Edition)

appeal is resolved, or, if there is no appeal, and the 30 days allowed for appeal has passed, HUD shall proceed to approve or disapprove the application.

(3) HUD will not process an application for disposition unless the PHA provides HUD with one of the following:

(i) An official board resolution or its equivalent from each established eligible organization stating that such organization has received the PHA offer, and that it understands the offer and waives its opportunity to purchase the project, or portion of the project, covered by the disposition application;

(ii) A certification from the executive director or board of commissioners of the PHA that the 30-day time frame to express interest has expired and no response was received to its offer; or

(iii) A certification from the executive director or board of commissioners of the PHA with supporting documentation that the offer was otherwise rejected.

§ 970.13 Environmental review requirements.

(a) Activities under this part (including de minimis demolition pursuant to § 970.27) are subject to HUD environmental regulations in 24 CFR part 58. However, HUD may make a finding in accordance with 24 CFR 58.11(d) of this title and may itself perform the environmental review under the provisions of 24 CFR part 50 if a PHA objects in writing to the responsible entity performing the review under 24 CFR part 58.

(b) The environmental review is limited to the demolition or disposition action and any known re-use, and is not required for any unknown future re-use. Factors that indicate that the future site reuse can reasonably be considered to be known include the following:

(1) Private, Federal, state, or local funding for the site reuse has been committed;

(2) A grant application involving the site has been filed with the Federal government or a state or local unit of government;

(3) The Federal government or a state or unit of local government has made a commitment to take an action,

including a physical action, that will facilitate a particular reuse of the site; and

(4) Architectural, engineering, or design plans for the reuse exist that go beyond preliminary stages.

(c) In the case of a demolition or disposition made necessary by a disaster that the President has declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*, or a disaster that has been declared under state law by the officer or entity with legal authority to make such declaration, pursuant to 24 CFR 50.43 and 24 CFR 58.33, the provisions of 40 CFR 1506.11 will apply.

§ 970.15 Specific criteria for HUD approval of demolition requests.

(a) In addition to other applicable requirements of this part, HUD will approve an application for demolition upon the PHA's certification that it meets the following statutory criteria, unless the application meets the criteria for disapproval under 24 CFR 970.29. An application for the demolition of all or a portion of a public housing project must certify that the project:

(1) Is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes, and no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life; and

(2) In the case of an application for demolition of a portion of a project, the demolition will help to ensure the viability of the remaining portion of the project.

(b) As to paragraph (a)(1) of this section:

(1) Major problems indicative of obsolescence are:

(i) As to physical condition: Structural deficiencies that cannot be corrected in a cost-effective manner (settlement of earth below the building caused by inadequate structural fills, faulty structural design, or settlement of floors), or other design or site problems (severe erosion or flooding);

(ii) As to location: physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental